

DEPARTMENT OF CORRECTIONS
MEMORANDUM OF UNDERSTANDING

SCOPE OF SERVICES

This Memorandum of Agreement ("MOU") is entered into, by and between the Commonwealth of Kentucky, Justice and Public Safety Cabinet, Department of Corrections ("the Commonwealth") and the Kentucky Association of Sexual Assault Programs ("Contractor") to establish an agreement to provide offenders with confidential emotional support services related to sexual violence as required by the Prison Rape Elimination Act ("PREA"). The initial MOU is effective from 15 March 2018 through 30 June 2019.

DEFINITIONS

"Certified volunteer" means a citizen not employed by the Commonwealth who provides specified services to the inmate population on an on-going basis and has met the Commonwealth's certification training requirements.

"Contracted private prison facility" means any prison owned or operated by a private entity that has contracted with the Commonwealth to house Commonwealth inmates.

"Crisis counseling" means emotional support services provided to offender-victims by community rape crisis advocates via mail, inmate calls to the established crisis hotline, or in person counseling sessions.

"Designated rape crisis center personnel" means personnel affiliated with a designated rape crisis member program of the Contractor who meet the qualifications for advocate and/or crisis counselor as defined in 920 KAR 2:010.

"Emotional support services" means 24-hour crisis line, hospital accompaniment, and in person crisis counseling.

"Inmate-victims" means persons incarcerated in a Commonwealth or contracted private prison facility who has experienced sexual abuse or assault at any time in his, her, or their life.

"Rape crisis center advocate-client privilege" means the privilege defined in KRE 506.

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The Commonwealth shall

1. Adopt policy and procedures requiring involvement of designated rape crisis center personnel affiliated with Contractor member programs a component of the standard response to a report of sexual violence and/or a request for help from a survivor of sexual violence by giving offenders contact information for access to outside victim advocates for emotional support services related to sexual violence.
2. Coordinate, with Contractor member programs, any requested crisis counseling sessions between inmate-victims and designated rape crisis center personnel and provide an adequate meeting area where sufficient confidentiality can be maintained during the said counseling sessions.
3. Allow entry of any designated rape crisis center personnel who meet all required guidelines as detailed in this MOU.
4. Facilitate any follow-up and on-going contact as requested by the Contractor and Contractor member program between the inmate-victim and designated rape crisis center personnel without regard to the status of an investigation.
5. Upon the request of designated rape crisis personnel, ensure that appropriate Commonwealth personnel are present to ensure the safety and security of designated rape crisis personnel.
6. Contact the appropriate Contractor regional rape crisis center to request that designated rape

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- crisis personnel accompany and support the inmate-victim through the forensic medical examination process and in-hospital investigatory interviews.
7. Ensure that inmate-victims are escorted to a hospital by security officers, none of whom are the identified perpetrator.
 8. Complete all necessary security clearances, as appropriate at each Commonwealth facility and contracted private prison facility.
 9. Provide the required Commonwealth certified volunteer training at the respective institution for Contractor member program personnel.
 - 9.1. This training will include, but not be limited to:
 - 9.1.1. appropriate interaction between designated rape crisis personnel and any inmate-victim;
 - 9.1.2. safeguarding of confidentiality; and
 - 9.1.3. other safety and security procedures necessary for each certified volunteer.
 10. Adopt policy and procedures providing that any written correspondence between inmates and the Contractor or Contractor member programs are treated identically to privileged mail pursuant to CPP 16.2, subject to corresponding facility policy and procedures.
 11. Communicate any questions or concerns to appropriate Contractor personnel.

The Contractor shall

1. Respond to requests from any and all Commonwealth facilities and contracted private prison facilities located in the same area development district to provide support services related to sexual violence including, but not limited to:
 - 1.1. hospital accompaniment for an inmate-victim during the forensic medical examination process;
 - 1.2. in-hospital investigatory interviews;
 - 1.3. emotional support services;
 - 1.4. referrals; and
 - 1.5. follow-up crisis counseling on request of the inmate-victim.
2. Provide no more than three in-person sessions to each inmate-victim, as deemed necessary by the designated rape crisis personnel.
3. In the event that an inmate-victim exhausts his, her, or their three allotted in-person sessions, refer subsequent requests for counseling to Commonwealth mental health staff by submitting a mental health referral form to the appropriate Commonwealth facility's or contracted private prison facility's medical department detailing the reasons for the referral.
 - 3.1. Designated rape crisis center personnel must have the appropriate release from the inmate-victim to submit this referral.
 - 3.2. Inmate-victims who have exhausted their three sessions may still utilize the crisis line or mail for crisis intervention
4. Provide crisis counseling through the crisis line 24 hours per day, seven days per week.
5. Ensure that, prior to responding to a request for services, designated rape crisis center personnel contact the designated Commonwealth or contracted private prison personnel to identify specific personnel who will be arriving to provide services.
 - 5.1. Any on-call designated rape crisis center personnel may present to the hospital for advocacy without advance notice.
 - 5.1.1. Designated rape crisis center personnel shall identify themselves as being on a list of approved staff and carry identification.

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6. Maintain confidentiality as required by federal laws, state laws, and Commonwealth policy and procedures for designated rape crisis center personnel.
7. In coordination with all Commonwealth facilities and contracted private prison facilities, obtain necessary security clearances for appropriate designated rape crisis center personnel and follow all facility guidelines for safety and security identified in the certified volunteer training.
8. Ensure that designated rape crisis center personnel attend the required Commonwealth certified volunteer training.
9. Communicate with the appropriate Commonwealth facility or contracted private prison facility to request the certified volunteer training when additional designated rape crisis center personnel need training.
10. Provide the Commonwealth any and all updates to the provided complete and comprehensive list of designated rape crisis center personnel employed by Contractor member programs quarterly.
11. Provide the Commonwealth a complete and comprehensive list of all rape crisis programs (Contractor's member programs) providing emotional support services in each area development district, as well as any updates or changes that occur throughout the term of this MOU within 3 business days of the execution of this MOU.
12. On a quarterly basis, provide the Commonwealth a list of current designated rape crisis center personnel by region who have completed the certified volunteer training.
13. Communicate any questions or concerns to the Commonwealth PREA Coordinator or the PREA Coordinator's designee at quarterly in-person meetings.

JUSTICE AND PUBLIC SAFETY CABINET TERMS AND CONDITIONS

1. Contractor shall comply with all applicable federal, state, and local laws. Contractor shall also comply with all applicable Commonwealth policies and procedures unless a specific exemption has been granted by the Commonwealth to the Contractor.
2. To the extent permitted by law, the Contractor agrees to indemnify and hold harmless the Commonwealth against any and all claims, losses, demands, obligations, and litigation, including attorneys' fees, that result from or by: (1) services rendered by the Contractor performing or supplying services in connection with performance of this MOU, (2) the erroneous or negligent acts of the Contractor, its officers, or employees in the performance of this MOU, (3) the Contractor's creation of a hazardous condition or exacerbation of a pre-existing hazardous condition; (4) the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes by the Contractor, (5) any and all acts and omissions of the Contractor, (6) the policies and procedures specifically involving all the Contractor employment practices used by the Contractor during the term of this MOU, and (7) any failure of the Contractor, its officers, or employees to observe federal, state, and local laws, including but not limited to labor laws and minimum wage laws.
3. Both parties, including any subcontractors or agents of each, agree to comply with all applicable state and federal confidentiality laws, including the Health Insurance Portability and Accountability Act, and to protect the security, confidentiality, and integrity of health information. The Contractor acknowledges and agrees that the Commonwealth shall be

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entitled, without waiving any other rights or remedies, to injunctive or equitable relief to enforce the requirements of this provision of this MOU.

4. Vendors and other state agencies that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. ("the Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set for in the Act.
 - 4.1. "Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one(1) or more of the following data elements:
 - 4.1.1. An account, credit card number, or debit card number that, in combination with any required security code, access code, or password, would permit access to an account;
 - 4.1.2. A Social Security number;
 - 4.1.3. A taxpayer identification number that incorporates a Social Security number;
 - 4.1.4. A driver's license number, state identification card number, or other individual identification number issued by an agency;
 - 4.1.5. A passport number or other identification number issued by the United States government; or
 - 4.1.6. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec. 1232g.
 - 4.2. As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects, or maintains) personal information from the Commonwealth pursuant to the contract or agreement."
 - 4.3. The Contractor agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - 4.4. The Contractor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the Commonwealth, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2) applies and the Contractor abides by the requirements set for in that exception. Notification shall be in writing on a form developed by the Commonwealth Office of Technology
 - 4.5. The Contractor agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
 - 4.6. Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the Contractor agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.
 - 4.7. In accordance with KRS 61.932(2)(a), the Contractor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology.

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- 4.8. The parties acknowledge that records, statistical information, and/or data provided by the Commonwealth to the Contractor are the property of the Commonwealth. In order for the Commonwealth to maintain control and integrity of its records, the Contractor agrees that any Freedom of Information Act request, Kentucky Open Records request, or other request seeking access to information or data provided by the Commonwealth will be reported to the Commonwealth, and if the requestor will agree to do so, the request will be forwarded to the Commonwealth. If the requester will not agree to withdraw the request and instead submit it to the Commonwealth, then the Commonwealth shall direct the Contractor in answering the request.
5. The Contractor agrees that it will not distribute, divulge, publish, or release any data or information obtained from or owned by the Commonwealth without the prior written approval of the Commonwealth unless compelled to do so by law or by a judicially signed order from a court of competent jurisdiction. The Contractor acknowledges that it receives the Commonwealth's data or information solely for the purposes of this MOU, and that its receipt of the Commonwealth's data or information in no way creates any ownership interest in the Commonwealth's data or information, unless explicitly provided otherwise within the terms and conditions of this MOU.
6. Upon the expiration of the term of this MOU, unless it is renewed prior to its expiration, the Contractor shall either: (1) return any and all data provided by the Commonwealth, destroy any and all copies of the data in whatever form they occur, complete the attached Data Destruction Certification letter, and submit the letter to the Commonwealth no less than 7 calendar days after expiration of this MOU; (2) destroy the data, including any and all copies of the data in whatever form they occur, without returning the data to the Commonwealth, complete the attached Data Destruction Certification letter, and submit the letter to the Commonwealth no less than 7 calendar days after expiration of this MOU; or (3) retain the data subject to the terms of this MOU regarding data ownership, privacy, and breach. The Commonwealth retains discretion to choose the option Contractor shall perform. In the event that the Commonwealth has not communicated to the Contractor which option should be followed, the Contractor shall perform the actions listed in option (1).
7. The parties agree that they receive all information communicated between them before the execution of this MOU in strict confidence and that the receiving party, its agents, or employees shall not, without prior written consent of the other party, disclose any such information, subject to Commonwealth of Kentucky and federal disclosure laws.
8. The Contractor shall not represent that a working copy, draft, or the finalized version of this MOU is identical to a previous iteration of this MOU if the Contractor has made edits since the last iteration. The Contractor shall clearly present all edits either through editing functions in word processing software or as a list provided contemporaneously with the most recently edited iteration.
9. Contractor shall perform only the work duties explicitly authorized in this MOU.
10. At no point shall any Contractor personnel be considered an employee of the Justice and Public Safety Cabinet, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, workers' compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be considered and deemed to be an employee of the Contractor.

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11. Nothing in this MOU shall be construed, in any way, as granting to any individual providing services under this MOU any of the claims, privileges, or rights established or recognized under KRS Chapter 18A or KAR Title 101.
12. In no event shall any Contractor personnel be deemed to be a third-party beneficiary of this MOU.
13. Each party shall provide a contact to resolve any and all issues related to this MOU and promptly update the contact information as necessary.
14. All notices under this MOU shall be given in writing. Electronic mail constitutes a writing.
15. No change, waiver, or discharge of any liability or obligation under this MOU on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
16. No party shall assign its respective rights or obligations under this MOU without prior written consent of the other party. Any purported assignment or delegation in violation of this MOU is void.
17. The terms and conditions of this MOU may only be amended by mutual written consent of both parties.
18. The Contractor shall report any and all acts and omissions constituting a violation of applicable federal, state, or local law; applicable Commonwealth policies and procedures; or this MOU to the Commonwealth in writing within one business day of the discovery of the violation.
19. This MOU shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.
20. The parties agree that any claim, action, or lawsuit arising under this MOU must be brought in Franklin Circuit Court in the Commonwealth of Kentucky.
21. If any term or provision or any part of this MOU is declared invalid or unenforceable, the remainder of this MOU shall not be affected, and each term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by the law.
22. This MOU is the final and exclusive agreement between the parties. All prior negotiations and agreements are superseded by this MOU.

OTHER TERMS AND CONDITIONS

Cancellation clause:

Either party may cancel the agreement at any time for cause or may cancel without cause on 30 days' written notice.

Access to Records:

The Contractor agrees that the contracting agency and its duly authorized representatives shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. "The Contractor" also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

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APPROVALS

This agreement is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this agreement and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Commonwealth


Signature

Title

JAMES L. ERWIN
Printed Name

4/13/18
Date

Contractor


Signature


Title

Eileen A. Recktenwald
Printed Name

4/20/18
Date

Approved as to form and legality


Attorney

